

ADVERTISING COMPLIANCE

TWO-PART SERIES

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This e-Book contains two White Papers, entitled “Advertising Compliance: Getting Ready for the Banking Examination, Part One” and “Advertising Compliance: Getting Ready for the Banking Examination, Part Two” by Jonathan Foxx, President & Managing Director of Lenders Compliance Group, published as magazine articles, respectively, in the May 2016 and June 2016 editions of National Mortgage Professional Magazine. Information contained in these article is not intended to be and is not a source of legal advice. The views expressed are those of the author and do not necessarily reflect the views or policies of Lenders Compliance Group, Inc., any governmental agency, business entity, organization, or financial institution. Lenders Compliance Group, Inc. makes no representation concerning and does not guarantee the source, originality, accuracy, completeness, or reliability of any statement, information, data, finding, interpretation, advice, opinion, or view presented herein. © 2016 Lenders Compliance Group, Inc. All Rights Reserved. © 2016 NMP Media Corp. All Rights Reserved. This article is copyrighted material and provided to you as a courtesy for your personal use only. You may use this article in print or online media, with attribution. Reproduction or storage of this article is subject to the U.S. Copyright Act of 1976, Title 17 U.S.C. and applicable law.

BOOKMARKS

ADVERTISING COMPLIANCE:
GETTING READY FOR THE BANKING EXAMINATION
PART ONE
MAY 2016

ADVERTISING COMPLIANCE:
GETTING READY FOR THE BANKING EXAMINATION
RISK ASSESSMENTS
PART TWO
JUNE 2016

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Advertising Compliance: Getting Ready for the Banking Examination

Jonathan Foxx *

Advertising is often central to a loan originator's marketing plans. After all, if prospective borrowers can't even find you when they need mortgage loans, there's nothing left but word of mouth, dropping off bagels at real estate brokers, giving away pens and pads with your name on it, offering occasional, educational and promotional presentations on loan products, and hanging out a website shingle with the hopes that you will be listed on Page 10 of Google Search.

Informing the public of loan products is a highly regulated activity in mortgage banking and finance. Buzz words, restricted words and phrases, and trigger terms can be a nasty nest of vipers that will catch you up in a regulator's net. The regulatory areas involving mortgage banking advertising include the Fair Housing Act, Equal Credit Opportunity Act (ECOA), Truth in Lending Act (TILA), Federal Trade Commission's Mortgage Advertising Rules, FHA mandates, Real Estate Settlement Procedures Act (RESPA), Unfair, Deceptive, or Abusive Acts or Practices (UDAAP), fair lending, the SAFE Act, the Fair Credit Reporting Act (FCRA), and state regulations. Clearly, advertising compliance is complex!

My firm looks at thousands of potential advertisements a year that are sent to us by our clients for clearance. Although we provide them with our Advertising Manual, which is deep and broad in application and contains many forms and formats, each advertisement still often needs a review, especially at the commencement of a marketing campaign. Our clients want to comply with federal and/or state advertising regulations; however, they feel continually constrained as to how best to both stay within bounds of regulatory compliance and also create appealing advertisements. Of course, banking examiners

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don't much care about how engaging and captivating an advertisement is; these professionals are tasked with protecting the consumer in accordance with required regulatory guidelines.

One of the very first requests a regulator asks at the outset of an examination is to receive for audit all advertisements involving contact with the public during the scope period. Woe be unto the company that does not have each and every advertisement ready and available for audit! And woe be unto the company that lets a regulator somehow uncover an advertisement that was not disclosed at the time of an examination – even if the advertisement had no violations in it, the trust factor with the auditor will not be easily re-established!

As many of you know, Lenders Compliance Group's orientation is what I call "applied compliance" – not the theoretical approach to compliance that seems to work in theory, but often becomes controversial in the on-going implementation of regulatory compliance. In this article, I am going to provide a practical approach to guiding you through the maze of certain advertising compliance rules as well as regulatory expectations. Obviously, the article is not meant to be comprehensive. But it is aimed at providing suggested ways and means toward the kind of hands-on, applied compliance that my firm handles every single day on behalf of our clients.

This is a two-part article. In this first part, I will discuss some basics, give you the principal ways to prepare for advertising compliance examinations, and highlight the banking examiner's expectations. In the second part, we'll explore marketing campaign development, the use of advertising checklists, triggering terms (the advertised words or phrases that "trigger" the need for additional disclosures), and the way advertisements impact fair lending.

BASICS

First and foremost, let's be clear about what is a viable advertisement.

There are essentially two features that are foundational: 1) it must be truthful; and 2) the intended audience must be "reasonably capable" of understanding the information contained in it. The advertiser's intent is not the sole determining compliance factor; rather, the manner in which the advertisement actually is received by the audience is dispositive. What is reasonable? One of my colleagues often refers to the "reasonable person rule" as the "village idiot rule;" that is, if the village idiot can be expected to understand the message, the "reasonable person rule" test may be passed. Sounds about right! In effect, a representation, omission, or practice is material if it is likely to affect a consumer's choice of or conduct regarding a product or service.

Put it this way: the general test is whether the "average" person in the intended audience – persons expected to read or hear the advertisement and to be influenced by it – will understand the message clearly. Perhaps it is not possible to quantify the number of persons in the intended audience who need

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to understand the advertisement clearly, but it should be understandable by a substantial number in the audience.

It is not necessary for an advertisement to state every feature of the loan product: an advertisement is not a legal treatise. That said, any features and any terms (including prices) or any potential benefits should be presented in a manner that does not mislead. That means no false impressions caused by omissions. Advertising is a sinkhole of omissions, whether intentionally caused or the result of an error.

For the most part, the American Bankers Association's definition of an advertisement offers a concise understanding,¹ as follows:

"Advertisement" means any message paid for by the sponsoring institution in a newspaper or magazine, on radio or television, on billboards, or in the form of brochures, statement stuffers, direct mail, and other printed material, including applications. Signage, either interior or exterior, and displays also are included. Although not strictly advertising, the terms also embrace oral communications between [bank] employees and actual or potential customers, including telephonic and face-to-face solicitations and inquiries."

Added to the foregoing definition would be social media advertising and website advertising - in fact any contact with the public where the goal of the message (written or spoken) causes or can be expected to cause an "intelligent purchase decision" by a consumer who sees or hears the advertisement and, being influenced by the information contained therein, can decide that using the advertised product or service is in his or her best interest - irrespective of whether the product or service is obtained from the advertiser. However, advertising does not include direct personal contacts relating to the negotiation of a specific transaction, or informational material distributed to only business entities.

GETTING READY FOR THE BANKING EXAMINATION

There are five aspects involving preparation for advertising compliance. If any one of these is not ready for and responsive to the regulator's document requests, the company will be scored down, and even may lead to administrative actions on the part of the supervising agency. Let us take a tour of these five components to advertising compliance, as well as the actions you should be taking in advance of an examination.

1. **MEDIA.** Determine the types of advertising media used and types of services or products that have been promoted. Be sure to review, update where needed, and test the relevant processes for:
 - a. Advertising Policies and Procedures
 - b. Advertising Files and Folders
 - c. Advertising Expense Records (viz., particularly payments to various media, such as radio, television, and newspapers)
 - d. Telephone solicitation and radio and television commercial scripts

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- e. Social Media Interactions
 - f. Website URLs
2. COMPLIANCE TRAINING. Determine the extent, adequacy, fulfillment, and scope of the compliance training received by staff responsible for responding to consumer inquiries and providing loan product and service information. In my opinion, all employees should take such training.
 3. TRAINING-TELEPHONIC AND ELECTRONIC COMMUNICATIONS: Determine the extent, adequacy, fulfillment, and scope of compliance training given to staff engaged in phone, email, and any electronic solicitations for loan products and services.
 4. REVIEWS: Determine the extent, adequacy, fulfillment, and scope of the reviews conducted on advertising and public notices for compliance with all applicable rules and regulations.
 5. AUDIT PROCEDURES: Determine the existing and needed audit procedures involving all advertising and solicitations (written or spoken) in order to comply with applicable regulatory requirements. Include in the audit procedures a means by which monitoring can be functionally implemented, such as the monitoring of outbound calls to consumers to ensure compliance with applicable law and internal policies; ensuring compliance with legal obligations; and regularly evaluating employee and service provider (viz., Marketing Services Agreements) or affiliate entities performance (if applicable).

During the examination, the regulator will be testing for advertising compliance. So you should not wait until the time of a banking exam for you to test your advertising compliance. We recommend a review, at least quarterly, of your advertising files. Consider taking these actions:

1. Review your advertising since the previous examination. If the file is voluminous, select a sampling of advertisements. A typical sample selection should include these reviews:
 - a. Product and service type
 - b. Media used (television, newspaper, radio, electronic, and so forth)
2. Determine if the reviews include a way – such as via checklists – for gauging compliance with applicable regulatory requirements. Assess the effectiveness of the compliance review procedures based upon a sampling of the advertising file.
3. Rate the advertisement for compliance with regulatory mandates, using (“1”) for fully compliant and (“5”) for least compliant. Specify, test for, and document all correction actions.
4. Maintain the documents involving the periodic review. Include in the review any complaints associated with the advertisement and the resolution of such complaints.

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EXAMINER'S AUDIT CRITERIA

When developing advertisements and market campaigns, differing regulatory frameworks may be involved and interlocked. For instance, in Regulation Z (TILA) an advertisement is a commercial message in any medium. For purposes of the FTC's Mortgage Acts and Practices Rule (MAP Ad Rule),² a commercial communication is a statement designed to effect a sale or create an interest in purchasing goods or services appearing in various formats, including the Internet or any other medium.

Examiners will evaluate the advertising materials and disclosures across all media, including print, television, radio, telephone solicitation scripts, and electronic media including the Internet, email and text messages. If the company engages in telemarketing, examiners are going to listen to a selection of the sales calls. Furthermore, if the company uses a third-party lead generator, there will be a deep dive into the extent and scope of any such relationships, in addition to a review of affiliated or other service providers (i.e., as a broker or agent) to advertise, offer, or provide loans or other products and services.

Anticipating the examiner's audit criteria is critical to a successful review.

Typically, a regulator will determine whether advertisements and promotional materials for mortgage loan products contain material misrepresentations,³ expressly or by implication, of the following:⁴

- the existence, nature, or amount of fees or other costs;
- number, amount, or timing of payments, including whether the payment includes amounts for monthly escrow payments for taxes and insurance;
- credit qualifications for a particular product or program;
- potential for default;
- product type;
- product effectiveness with respect to debt elimination;
- nature of counseling services; or
- the existence, nature, or amount of prepayment penalties.

There are red flags that examiner's look for when evaluating advertisements, such as the use of fine print, separate statements or inconspicuous disclosures. They will want to know if additional products or services are sold or offered in connection with the loan, such as credit insurance products, home warranties, or annuities. Additionally, the regulator will determine whether advertisements and promotional materials provide timely, clear, and understandable information about the existence of costs, payment terms, penalties, or other terms and charges, the reasons for their imposition, and the salesperson's compensation from cross-sales.

The audience for the advertisement is factored into the overall compliance evaluation. An examiner will determine the target audience for each type of advertisement for a product and service as well as whether

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the company designs and publishes advertisements, promotional materials, disclosures and scripts that are “comprehensible by the target audience.”

LENDERS COMPLIANCE GROUP is the first mortgage risk management firms in the United States that provides professional guidance and support to financial institutions in residential mortgage compliance, including the following practice areas: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • TRID Orientation and Readiness • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker & TPO Compliance • Mortgage Servicing Compliance • Investor Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence Reviews • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • Loan Originator Approvals • Closing & Settlement Agent Approvals • Vendor Approvals.

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¹ Statement of Principles on Financial Advertising, American Bankers Association

² Mortgage Acts and Practices-Advertising, Final rule, 16 CFR Part 321, Federal Trade Commission, FR/76-41, July 22, 2011, Rules and Regulations

³ See also the MAP Rule, 12 CFR 1014.3, which applies to nonbanks and certain state-chartered credit unions, which lists nineteen examples of specific prohibited claims.

⁴ See Module 2 of the CFPB’s Examination Procedures (Mortgage Originations), January 2014

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Advertising Compliance: Getting Ready for the Banking Examination

Risk Assessments

(Part Two)

Jonathan Foxx *

In Part One of this two-part series, I noted that “the regulator will determine whether advertisements and promotional materials provide timely, clear, and understandable information about the existence of costs, payment terms, penalties, or other terms and charges, the reasons for their imposition, and the salesperson’s compensation from cross-sales.”¹

Just as an examiner will review the advertising materials using various metrics and means, so also should the mortgage loan originator use three tools to ensure compliance with advertising rules.

The tools are:

- Advertising Manual, with a host of supporting forms;
- Record Retention, containing all advertisements and reviews thereof; and
- Forms and Checklists, constituting all loan products and origination methods.

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In this article, we are going to explore these three tools. While the considerations do not encompass all the requirements and conditions relating to each tool, I hope to provide a general understanding of how these should be designed and, most importantly, how they must be interfaced with one another.

ADVERTISING MANUAL

At the outset, let me clarify the importance of distinguishing advertising policy and procedure from an advertising manual. While the former often does not contain the latter, the latter most certainly contains the former. That is to say, a policy and procedure may or may not be actively given to employees; however, a manual is always given to them. The advertising policy may set forth rules and philosophy, but the manual is the actual implementation guidelines that an employee consults to find decisive standards.

Many companies have an advertising policy and procedure document, sometimes relying on it to serve the purpose of an advertising manual. However, employees – such as loan officers – need to know not only policies and procedures but also the whole gamut of potential conditions that affect their advertising campaigns. Only an advertising manual satisfies this overall need.

Every employee that receives the advertising manual must sign an attestation of receipt. This document has several purposes. It confirms that the employee has been put on notice about the company's advertising rules and guidelines; it may be used as proof that the document is expected to be complied with or, if not, the employee will be disciplined; it demonstrates to an examiner that the company proactively provides such guidance; and, finally, it affirms the company's commitment to on-going monitoring of advertising compliance. A signed attestation should be a requirement of employment.

There are three fundamental purposes of the advertising manual:

1. The employee must sign for receiving it. The reason for such receipt is to ensure that the employee has proven receipt and will be held responsible for meeting the requirements therein.
2. The company must set forth its advertising standards. This means not just training on the manual or learning the company's advertising rules. It means also empowering the employee to seek immediate guidance at all times, irrespective of availability to compliance personnel.
3. Interaction between employees and compliance department. As part of the process toward approval by the compliance department, the manual provides forms that serve as a firm record of advertising that is duly and properly authorized by the company.

At a minimum, the advertising manual should provide rules and guidance in regulatory risks and advertising restrictions. However, a comprehensive document contains far more than statements of policy. It begins with concise definitions of advertisements and promotional materials. Furthermore, the manual should set forth the applicable regulations that frame advertising compliance. Most importantly, there must be a written set of approval procedures, which contain corresponding forms and checklists.

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Certain sections must be included, such as the following:

- Electronic Media
- Telemarketing
- Do Not Call
- Do Not Fax
- Do Not Email
- Prescreening
- Firm Offers of Credit
- Published Rates
- Rate Sheets
- Third Party Advertisements

If the company offers special programs, such as loan products designed for senior citizens, these must be outlined and given some depth as to the target audience and restrictions.

An important inclusion in the advertising manual is a set of reference terms, which ought to be in a separate section of its own. Examples should be given for “triggering terms,” the advertised words or phrases that “trigger” the need for additional disclosures.

RECORD RETENTION

Whereas the subject of record retention often comes last in an outline of regulatory compliance policies, it actually holds second place with respect to advertising compliance, after the advertising manual and before the forms and checklists. This priority is due to the critical need to retain all advertisements.

A company must keep copies of printed advertisements, as well as the text of advertisements that are conveyed by electronic or broadcast media, for a two (2) year period from the date issued by the advertiser. Let me be as clear as possible here: retain copies of printed advertisements (including transcripts of non-print media) and marketing materials used, including all materially different advertising, marketing and promotional media regarding any mortgage credit product.

As a policy position, the company should impose a uniform two (2) year record retention rule to be enforced through the latter of the two year retention period or through at least one regulatory examination. As a practical matter, retain advertisements in perpetuity, if possible. Furthermore, I suggest the company maintain any advertisements that apply to evidence of required actions.

CHECKLISTS AND FORMS

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There are many checklist categories that are used in advertising compliance. I am going to provide a brief outline of three of them for you. These are the General, FHA, and Online checklists. I have outlined below a checklist for each category, with an expanded checklist for online, given that online is a large source of marketing and loan origination activities.

The list is deliberately brief and by no means comprehensive, so view them with the proviso that you must develop a checklist that is specific to your company's loan products and risk profile.

You may not know the implications of some of these checklist items; however, please assume that the very fact that these items are on the lists indicates they impute important inferences associated with advertising compliance.

GENERAL CHECKLIST – ADVERTISING COMPLIANCE (Partial Sample)

- ☐ Does the advertising include the HUD logo or legend?
- ☐ Does the advertising include the Fair Housing logotype?
- ☐ Does the advertising have any tendency or capacity to deceive?
- ☐ Is the advertising accurate?
- ☐ If the advertising describes a benefit, does it also describe any conditions that must be satisfied to obtain the benefit?
- ☐ Does the advertising include any Truth-in-Lending Act triggering terms? (Note: if you do not have a list of these trigger terms, please consult a compliance professional. The list is extensive, long, and requires careful review.)
- ☐ Does the “®” or “SM” symbol appear with any service mark?
- ☐ If a service mark appears, does the following language appear: “[Mark] is a service mark of [name of owner of the mark]?”
- ☐ If the advertisement is for a home equity credit line, does it comply with the Truth-in-Lending Act's special home equity credit line requirements?
- ☐ Does the advertising include any references to tax deductibility?
- ☐ Does the advertising make any “guarantees?”
- ☐ Are any applicable state-specific rules satisfied?
- ☐ Have all statements of fact been substantiated?
- ☐ For telemarketing activities, have the telemarketing requirements been satisfied?

FHA CHECKLIST – ADVERTISING COMPLIANCE (Partial Sample)

- ☐ Advertising patterns or practices that a reasonable person would believe indicate prohibited-basis customers are less desirable.
- ☐ Advertising only in media serving non-minority areas of the market.

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- ☐ Marketing through brokers or other agents that the lender knows (or has reason to know) would serve only one racial or ethnic group in the market (unless part of an effort to attract minorities not otherwise being reached).
- ☐ Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the lender's assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.
- ☐ Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products that:
 - Explicitly exclude groups of prospective borrowers on a prohibited basis.
 - Exclude geographies (i.e., census tracts and zip codes) within the institution's marketing area that have significantly higher percentages of minority group residents than the remainder of the marketing area.
- ☐ Proportion of monitored prohibited-basis applicants is significantly lower than that group's representation in the total population of the market area.
- ☐ Consumer complaints alleging discrimination in advertising or marketing loans.

ONLINE CHECKLIST – ADVERTISING COMPLIANCE (Partial Sample)

- ☐ A lender that advertises online credit products subject to the Fair Housing Act must display the equal housing lender logotype and legend or other permissible disclosure of its nondiscrimination policy if required by the rules of its regulator.
- ☐ In some cases, regulations contain special rules for multiple-page advertisements. For online advertisements that may be deemed to contain more than a single page; thus, lenders should comply with the applicable sections of Regulation Z,² which describe the requirements for multiple-page advertisements). (Note: It is not yet clear what would constitute a single "page" in the context of the Internet or online text.)
- ☐ Internet or other systems in which a credit application can be made online may be considered "places of business" under HUD's rules prescribing lobby notices.
- ☐ Ensure that online products are offered and evaluated on a non-discriminatory basis and that no illegal discouragement exists.
- ☐ Place any required disclosure as close as possible to the advertising claim.
- ☐ View disclosures on the same platform as the advertisement and be sure to include any disclosures necessary to prevent the advertisement from being misleading.
- ☐ Incorporate disclosures into advertisements whenever possible. If including sufficient disclosure is not possible because of space constraints, consider putting the disclosures clearly and conspicuously on a page to which the advertisement links (if allowed by applicable law).
- ☐ When using hyperlinks:
 - Make the link obvious.
 - Appropriately label the link to convey its importance, nature and relevance.

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- Use hyperlinks consistently, so customers know when they are available.
- Place the link as close as possible to the relevant information.
- Take customers directly to the disclosure on the click-through page.
- Assess the effectiveness of the link by monitoring click-through rates and other information about customer use; make changes as appropriate.
- Use the “reasonable person rule” and assume that each page of the website is not going to be read by the viewer nor every word - nor visit every web page.
- Design advertisements so scrolling is not necessary to find a disclosure. When scrolling is necessary, use text or visual cues to encourage scrolling.
- Research about where consumers may look on the screen for information.
- Recognize and respond to technical limitations or unique characteristics of a communication method when making disclosures.
- Display disclosures before customers make a decision to buy.
- Repeat disclosures as needed on lengthy websites and for repeated advertising claims.
- Be on the lookout for multiple routes through the website and be sure disclosures are repeated as necessary.
- Prominently display disclosures; be aware of color, size and graphics.
- Review the entire advertisement (as a whole) to address the effectiveness of disclosures in light of other elements (viz., text, graphics, hyperlinks, and sound).
- If using audio disclosures with audio claims, present them in a volume and cadence consumers can hear and understand.
- Use plain language and syntax.
- If a disclosure cannot be made clearly and conspicuously so as to prevent an advertisement from being deceptive, do not use the advertisement.
- To determine whether a particular disclosure is clear and conspicuous, consider:
 - Its placement in the ad and its proximity to the claim it qualifies.
 - Its prominence.
 - Whether seeing the disclosure is unavoidable.
 - Whether other items in the advertisement might distract attention from the disclosure.
 - Whether the disclosure should be repeated several times to be effectively communicated, or because consumers may enter the site at different locations or travel on paths that might cause them to miss it.
 - Whether audio messages have adequate volume and cadence.
 - Whether the language of the disclosure is understandable to the intended audience.
 - Monitor and analyze data for indications that disclosures were or were not comprehended, and make necessary adjustments.
- Pay close attention to technological limitations. (For example, a disclosure that requires Adobe Flash Player will not be displayed on certain mobile devices.)
- Deactivate pop-up disclosures that can be blocked. Using ‘unblockable’ pop-ups may be problematic.
- For audio claims, use audio disclosures. For written claims, use written disclosures.

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Other advertising checklists that should be included are, as applicable:

- Closed End Credit
- Open End Credit
- Reverse Mortgages
- Home Equity Lines of Credit
- Fair Lending
- UDAAP

In addition, consider providing a set of Reference Guide or Quick Reference Guide with the following sections:

- Close End Credit – Triggering Terms
 - General Phrases: Do Not Trigger Full Disclosure
- Closed End Credit Triggering Terms
 - General Phrases: Do Trigger Full Disclosure
- HELOC – Triggering Terms
 - General Phrases That DO Trigger Full Disclosure
- Advertising Descriptions and Phrases (i.e., Terms of Offer)

A form should be provided in the advertising manual in order to ensure that a request has been made to the compliance department for approval of the advertisement. Such a form may be called “Advertising Request Approval Form,” or some other title, but the purpose of the form is to provide the following information and documentation:

- Name of requester and date of request
- Summary of the advertisement
- Media
- Date(s) of publication
- Specimen of advertisement
- Audience
- Approval or Denial (viz., with management signature and date)

The form and all revisions to the advertisement prior to and at publication are kept together for future use as well as to maintain supporting proof of the review process.

TRIGGERING TERMS

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Certain advertising terms, known as “triggering terms,” cause the need for additional disclosure. The presence of these terms in an advertisement can lead to TILA violations, among other things. There are triggering terms associated with different loan products, such as home equity credit lines, closed end credit, HELOCs, and many other loan products.

For instance, a few terms for closed end credit that trigger the need for additional disclosure are:

- “Up to 48 months to pay”
- “90% financing”
- “As low as \$50 a month”
- “36 equal payments”
- \$500 total cost of credit”

Of course, there are triggering terms that do not trigger additional disclosure.

Some examples of terms for closed end credit that do not trigger the need for additional disclosure are:

- “Defer your first monthly installment until July”
- “Pay monthly”
- “Regular monthly payments”
- “5% Annual Percentage Rate Loans”
- “Qualify at 1.00% below prime.”

Virtually all aspects of advertising must be evaluated in an advertisement. Depending on the advertisement or campaign’s loan product, advertising compliance should consider such categories as the term of the offer or promotion, the limitations on use or scope of the offer, general limitations and restrictions on the offer, limitations on geographical scope, limitations as to choice of loan products or availability, limitations of liability, qualifications or prerequisites to availability, and many more factors.

FAIR LENDING

Advertisements are a minefield of potential fair lending violations. There are some rudimentary indicators of potential Disparate Treatment in marketing of residential loan products. Disparate treatment occurs when a company treats a credit applicant differently based on one of several prohibited bases, such as race or color, national origin, religion, and several other bases.

Importantly, an allegation of a fair lending violation does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself.³

When a company applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a Disparate Impact. The fact that a policy or practice creates

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a disparity on a prohibited basis is not alone proof of a violation. According to the interagency examination procedures set forth by Federal Financial Institutions Examination Council (FFIEC), “when an examiner finds that a lender’s policy or practice has a disparate impact, the next step is to seek to determine whether the policy or practice is justified by ‘business necessity.’ The justification must be manifest and may not be hypothetical or speculative.”⁴

Factors that may be relevant to the justification could include cost and profitability. Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be in violation if an alternative policy or practice could serve the same purpose with less discriminatory effect. But, as stated above in the case of disparate treatment, so also evidence of discriminatory intent is not necessary to establish that a lender's adoption or implementation of a policy or practice that has a disparate impact is in violation of the Fair Housing Act or Equal Credit Opportunity Act.

In evaluating whether there is a potential for a fair lending violation in an advertisement, FFIEC has also offered several factors to consider, amongst which are:⁵

- Advertising patterns or practices that a reasonable person would believe indicate prohibited basis customers are less desirable.
- Advertising only in media serving non-minority areas of the market.
- Marketing through brokers or other agents that the institution knows (or has reason to know) would serve only one racial or ethnic group in the market.
- Use of marketing programs or procedures for residential loan products that exclude one or more regions or geographies within the institutions assessment or marketing area that have significantly higher percentages of minority group residents than does the remainder of the assessment or marketing area.
- Using mailing or other distribution lists or other marketing techniques for pre-screened or other offerings of residential loan products that:
 - Explicitly exclude groups of prospective borrowers on a prohibited basis; or
 - Exclude geographies (i.e., census tracts, ZIP codes, etc.) within the institution's marketing area that have significantly higher percentages of minority group residents than does the remainder of the marketing area.
- Proportion of prohibited basis applicants is significantly lower than that group's representation in the total population of the market area.
- Consumer complaints alleging discrimination in advertising or marketing loans.

With respect to media usage, the follow steps should be undertaken:⁶

- Determine in which newspapers and broadcast media the institution advertises.
- Identify any racial or national origin identity associated with those media.

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- Determine whether those media focus on geographical communities of a particular racial or national origin character.
- Learn the institution's strategies for geographic and demographic distribution of advertisements.
- Obtain and review copies of the institution's printed advertising and promotional materials.
- Determine what criteria the institution communicates to media about what is an attractive customer or an attractive area to cultivate business.
- Determine whether advertising and marketing are the same to racial and national origin minority areas as compared to non-minority areas.

UDAAP

A marketing campaign, whether consisting of one or numerous advertisements and promotional opportunities, must be scrutinized for potential UDAAP (Unfair, Deceptive, or Abusive Acts or Practices) and fair lending violations. Nearly any kind of “puffery” can cause a UDAAP violation, the classic example being over-promising and under-delivering! Another classic is up-selling or down-selling to less attractive products or products unsuitable for the audience of prospective applicants.

An act or practice is deceptive if there is a representation, omission of information, or practice that is likely to mislead consumers who are acting reasonably under the circumstances, and the representation, omission, or practice is one that is material, for instance, likely to affect consumers’ decisions to purchase or use the product or service at issue.⁷

There is a two-prong rule for determining if an act or practice is deceptive.⁸

- There is a representation, omission of information, or practice that is likely to mislead consumers acting reasonably under the circumstances; and
- That representation, omission, or practice is material to consumers.

Violations of UDAAP easily abound if applicable disclosures are not clear and unambiguous, such as where material information is omitted from the marketing campaign, information is contradicted by laws or regulations, all fees are not disclosed or their timing not given, use of the word “Free” is misleading, fake images and testimonials are used, so-called “guarantees” are misleading, and, in general, insufficient information causes a consumer to not reasonably understand the terms of the campaign.

Here is a three-part test recommended by the FTC⁹ as a tool to avoid UDAAP violations in advertising:

1. The practice must be one that causes or is likely to cause substantial injury to consumers.
2. The injury must not be outweighed by countervailing benefits to consumers or to competition.
3. The injury must be one that consumers could not reasonably have avoided.

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This three-part formula may be taken as a rule-of-thumb method toward screening advertisements for potential UDAAP violations. The fact is that there is a distinct prohibition or restriction on unfair or deceptive advertising and all due efforts must be undertaken toward the goal of preventing unfair or deceptive practices.

Keep in mind that a representation may be express or implied. An “express claim” directly represents the fact at issue, while an “implied claim” does so in an oblique or indirect way.¹⁰ Whether an implied claim is made depends on the overall net impression that consumers take away from an advertisement, based on all of its elements (language, pictures, graphics, and so forth).¹¹ Therefore, the examiner is going to evaluate whether consumers’ impressions or interpretations of a representation or omission are reasonable.

In Part One of this two-part series, I mentioned the “reasonable person” rule. I stated that one of my colleagues often refers to the “reasonable person rule” as the “village idiot rule;” that is, if the village idiot can be expected to understand the message, the “reasonable person rule” test may be passed. Be forewarned, if there is a claim, challenge or examination finding to whether a consumer is in any way misled or may be misled by an advertisement, the onus will be on the company to prove otherwise!

Indeed, reasonableness is evaluated based on the sophistication and understanding of consumers in the group to which the representation is targeted, which may be a general audience or a specific group, such as senior citizens.¹² But a claim may be susceptible to more than one reasonable interpretation, and if one such interpretation is misleading, then the advertisement is deceptive, even if other, non-deceptive interpretations are possible.¹³

LENDERS COMPLIANCE GROUP is the first mortgage risk management firms in the United States that provides professional guidance and support to financial institutions in residential mortgage compliance, including the following practice areas: Mortgage Acts & Practices • Legal and Regulatory Compliance • Forensic Mortgage Audits • TRID Orientation and Readiness • HUD Exam Readiness • Licensing Compliance • HMDA/CRA • Information Technology & Security • Portfolio Risk Management • Quality Control Audits • Prefunding Audits • Retail, Wholesale, and Correspondent Platforms • Broker & TPO Compliance • Mortgage Servicing Compliance • Investor Compliance • Loss Mitigation Strategies • Marketing Compliance • Due Diligence Reviews • Credit Risk Management • Loan Analytics Audits • Compliance Audits • Banking Exam Readiness • GSE Applications • Ginnie Mae Applications • Training & Education • CFPB Exam Readiness • Anti-Money Laundering Program Compliance • Loan Originator Approvals • Closing & Settlement Agent Approvals • Vendor Approvals.

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¹ “Advertising Compliance: Getting Ready for the Banking Examination,” by Jonathan Foxx, National Mortgage Professional Magazine, May 2016, Volume 8, Issue 5, p 94

² For instance, § 1026.16(c), § 1026.24(d)

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³ *Interagency Fair Lending Examination Procedures*, August 2009, p iii, Office of the Comptroller of the Currency Federal Deposit Insurance Corporation, Federal Reserve Board Office of Thrift Supervision, National Credit Union Administration

⁴ *Idem.* p iv

⁵ *Idem.* p 11

⁶ *Idem.* P 39

⁷ Section 5 of the FTC Act broadly proscribes unfair or deceptive acts or practices in or affecting commerce.

⁸ *Deception Policy Statement*, at 176–77, Federal Trade Commission Policy Statement on Deception, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174–84 (1984) (Deception Policy Statement). See also *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001); *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006), *aff'd*, 512 F.3d 858 (7th Cir. 2008); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1009 (N.D. Ind. 2000); *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998)

⁹ Section 5(n) of the FTC Act sets forth a three-part test to determine whether an act or practice is unfair.

¹⁰ *FTC v. QT, Inc.*, 448 F. Supp. 2d at 957

¹¹ See *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006) (“A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.”); *FTC v. Gill*, 265 F.3d at 956 (affirming deception finding based on “overall ‘net impression’” of statements); *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989)

(advertisement was deceptive despite written qualification); *Thompson Med. Co. v. FTC*, 791 F.2d 189, 197 (DC Cir. 1986) (literally true statements may nonetheless be deceptive); *FTC v. QT, Inc.*, 448 F. Supp. 2d at 958.

¹² *Op. cit.* 4, pp 177-179

¹³ *Idem* p 178

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We provide complete or partial outsourcing of risk management with respect to the regulatory compliance function and its requirements. We are the first risk management firm in the country devoted exclusively to mortgage compliance that also provides a full complement of products and services in all areas of mortgage banking.

Our professionals have an average of 25 years in the residential mortgage origination industry, consisting of compliance executives, legal counsel, and former regulators who have created and implemented successful compliance programs. We are actively engaged in monitoring ever-changing laws and regulations that affect the industry.

Typically, our clients are Mortgage Bankers, Mortgage Brokers, Wholesale Lenders, Correspondent Lenders, Warehouse Banks, HUD/DE Mortgagees, FHA Loan Correspondents, Servicers, Credit Unions, State and Federally regulated Banks, and their mortgage company subsidiaries.

For many clients, we provide a complete regulatory compliance program that includes risk assessments, as well as program development, implementation, and administration. For other clients, we supplement internal resources to find, address and provide Best Practices solutions to specific regulatory compliance issues. In either case, we serve as an objective and independent evaluator of current and proposed mortgage compliance procedures, to spot potential problems, and, when necessary, to suggest alternatives.

Our range of services includes federal and state mortgage compliance; legal reviews and remedies; HUD-FHA, VA, USDA, CFPB, federal prudential regulators and state pre-examination preparation and post-examination implementation; Fannie/Freddie/Ginnie applications and due diligence; representation to the GSEs, federal and state regulators, HUD and the VA; mortgage quality control; forensic loan audits; mortgage servicing compliance; loss mitigation compliance; business development; information technology and security; anti-money laundering audits; identity theft prevention and Red Flags compliance; statutory licensing; policies and procedures guidance; HMDA/CRA reviews; and even strategies to increase sales through RESPA-compatible ABAs.

Each institution we serve is unique with respect to size, and also with respect to products, complexity, and business strategy. Our professionals work closely with management to tailor our services to meet these requirements.

Contents

MORTGAGE RISK MANAGEMENT	3
AUDITS AND DUE DILIGENCE REVIEWS.....	3
DUE DILIGENCE	4
LOAN LEVEL ANALYTICS	4
SECURITIZATION AND MORTGAGE FRAUD AUDIT	5
CFPB SUPERVISION AND EXAMINATION	5
ANTI-MONEY LAUNDERING PROGRAM – NONBANK RMLOS	6
AGENCIES AND GINNIE APPLICATIONS	7
SERVICER QUALITY ASSURANCE.....	7
SERVICER COMPLIANCE.....	8
MORTGAGE DEFAULTS.....	9
LICENSING	9
THIRD PARTY ORIGINATOR APPROVALS.....	9
VENDOR MANAGEMENT COMPLIANCE	10
TRAINING	11
THIRD PARTY ORIGINATOR APPROVAL - DUE DILIGENCE	12
DISASTER RECOVERY PLAN.....	13
QUALITY CONTROL AUDITS	13
QUALITY CONTROL PLANS.....	13
LOAN ORIGATION SYSTEMS AND PLATFORM DEVELOPMENT	14
LOAN LEVEL ANALYTICS AND AUDITS	14
PREFUNDING REVIEWS.....	14
LOAN ORIGINATOR COMPENSATION – AUDIT AND EXAMINATION	15
BUSINESS DEVELOPMENT	16
INFORMATION SECURITY PLAN AND RISK ASSESSMENT	16
FORENSIC MORTGAGE AUDIT®	16
POLICIES AND PROCEDURES	17
IDENTITY THEFT PREVENTION PROGRAM.....	17
REGULATORY COMPLIANCE - RESEARCH	17

MORTGAGE RISK MANAGEMENT

- Review appropriate consumer disclosures and forms to comply with federal, state, GSEs, conventional, conforming and nonconforming, FHA, VA, USDA, and investor guidelines.
- Review and provide certain policies and procedures to assure compliance with federal law and state law on a 24/7 basis.
- Review and provide due diligence procedures for mortgage loan originator approvals.
- Conduct policies and procedures reviews to determine quality assurance and compliance.
- Conduct risk assessments, where needed, to detect strengths and weaknesses in the loan origination process.
- Provide checklists, charts, and forms, where needed, to comply with federal and state law.
- Periodically conduct and/or participate in Compliance Committee meetings.
- Off-site and/or periodic on-site meetings to assess regulatory guidance.
- Review compliance requirements for strategic alliances.
- Review retail, wholesale, and correspondent compliance.
- Informal representation to federal and state banking authorities.

AUDITS AND DUE DILIGENCE REVIEWS

The following audits and due diligence reviews comply with federal, state, and Interagency guidelines. Our reviews satisfy an external auditor function. Each audit and due diligence may be conducted throughout the year in accordance with an agreed-to compliance calendar. Each audit and due diligence review provides both preliminary findings and a final report. Due diligence reviews include:

ADVERTISING, MARKETING, TELEMARKETING, SOCIAL MEDIA
ANTI-MONEY LAUNDERING PROGRAM AND SAR COMPLIANCE
BANKING EXAMINATIONS: HUD, GSES, GINNIE, FEDERAL, STATE
CASH MANAGEMENT
COMPLIANCE MANAGEMENT SYSTEM
CONSUMER COMPLAINTS
CONSUMER FINANCIAL PROTECTION BUREAU (CFPB) – EXAM COMPONENTS
CUSTOMER IDENTIFICATION PROGRAM (CIP)
EQUAL CREDIT OPPORTUNITY ACT
FAIR LENDING
HMDA DATA COLLECTION & REPORTING
HUMAN RESOURCES
IDENTITY THEFT PREVENTION PROGRAM – RED FLAGS
INFORMATION SECURITY
INFORMATION TECHNOLOGY
LICENSING AND REGISTRATION COMPLIANCE
LOAN ANALYTICS (FORENSIC, PORTFOLIO, SECURITIZATION)
LOAN ANALYTICS (HUD, VA, CONVENTIONAL, USDA)
LOAN ORIGINATOR COMPENSATION (TILA) MORTGAGE OPERATIONS

MORTGAGE SERVICING AND SUBSERVICING
OPERATIONS: CLOSING AND SHIPPING
OPERATIONS: DISCLOSURE AND PROCESSING
OPERATIONS: UNDERWRITING AND CREDIT POLICIES
ORIGINATION PLATFORM CONFIGURATION & DEVELOPMENT
POINT OF SALE: PROCESS AND DISCLOSURES
PORTFOLIO RISK ASSESSMENT
PRIVACY AND GRAMM-LEACH-BLILEY ACT
QUALITY ASSURANCE PROCESS: ADVERSE ACTION, REPURCHASE, EPD REVIEWS
QUALITY ASSURANCE PROCESS: FRAUD, LICENSING, RECORD RETENTION
QUALITY CONTROL: PLANS & PROCEDURES
RATE LOCK AND SALES RATE LOCK
REAL ESTATE LOANS – CLOSED-END (RESIDENTIAL)
REAL ESTATE LOANS – REVERSE MORTGAGES
REAL ESTATE SETTLEMENT PROCEDURES ACT
RECORD RETENTION
REGULATION O: LOANS TO COMPANY EXECUTIVES, DIRECTORS, PRINCIPALS
SAFE ACT (NMLSR)
SECONDARY MARKETING AND CAPITAL MARKETS
SHIPPING AND DELIVERY
TRAINING AND EDUCATION
WEBSITE COMPLIANCE
VENDOR MANAGEMENT

DUE DILIGENCE

Capable of scaling up to sizable transactional projects on behalf of investors, mortgage bankers, warehouse lines, REITs, PPIPs, portfolio lenders, servicers, and commercial banks. Services include Customized ratings for client specific product guidelines, daily updates and continual access to report findings, automated file review with statistical risk ratings, and file review online or at client's offices.

LOAN LEVEL ANALYTICS

Whether you purchase loans from several originators or originate loans for further sale to investors, we can help you on your pre-close and post-close audits, due diligence, quality control and assurance needs.

In addition to keeping our clients informed throughout the audit process, our findings are provided in a written report and presented to executive management in a manner that facilitates quick but well informed decisions. We provide independent expertise and have the capacity to be both flexible and responsive in accordance with your due diligence needs.

Our staff consists of professionals experienced in underwriting, servicing and loan originations. All reviews are conducted to validate compliance with federal, state, and local regulations, and include a evaluations of the guidelines of Fannie Mae, Freddie Mac, Ginnie Mae, FHA, VA, and various private investors.

We can receive all your information electronically as well as through physical files. Our advanced workflow methodologies enable a cost effective and expeditious solution to all loan analytics requirements.

SECURITIZATION AND MORTGAGE FRAUD AUDIT

Mortgage fraud, loan level reviews detect mortgage fraud. Violations uncovered of federal and/or state banking regulations. Fully automated and manual methodologies and research engines produce a comprehensive report.

CFPB SUPERVISION AND EXAMINATION

Preparation for the CFPB Examination includes the CFPB's own procedures.

Comprehensive audit and due diligence review in accordance with the CFPB's bank and nonbank Supervision and Examination Manual, a basic tool in the CFPB's supervision program.

Examination Preparation

Part I - Supervision and Examination Process

Part II - Examinations Procedures

- Unfair, Deceptive or Abusive Acts or Practices (UDAAP)
- Equal Credit Opportunity Act (ECOA)
- Home Mortgage Disclosure Act (HMDA)
- Truth in Lending Act (TILA)
- Real Estate Settlement Procedures Act (RESPA)
- Homeowners Protection Act (HPA)
- Consumer Leasing Act (CLA)
- Fair Credit Reporting Act (FCRA)
- Fair Debt Collection Practices Act (FDCPA)
- Electronic Fund Transfer Act (EFTA)
- Truth in Savings Act (TISA)
- Privacy of Consumer Financial Information (GLBA)
- Mortgage Servicing Examination Procedures

Part III – Examination Process Templates

Templates

- Entity Profile
- Risk Assessment
- Supervision Plan

- Examination Scope Summary
- Examination Report

ANTI-MONEY LAUNDERING PROGRAM – NONBANK RMLOS

We review, monitor, audit, test, and provide policies, procedures, and forms, in accordance with the “Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators.” [Financial Crimes Enforcement Network, Department of the Treasury, 31 CFR Parts 1010 and 1029, Final Rule, Federal Register, Vol. 77, No. 30, 2/14/2012.]

Risk Factors

- Anticipated account activity subject to Anti-Money Laundering (AML).
- Types of products and services offered by the RMLO.
- Locations and markets served by the RMLO.
- Purpose of the account.

Risk Mitigation

- Identifying RMLO relationships.
- Assessing the potential risks posed by the RMLO relationships.
- Conducting ongoing due diligence on the RMLO relationships when necessary.
- Ensuring RMLO relationships are appropriately considered within the required monitoring and reporting systems.
- Registration with FinCEN and compliance requirements.
- Procedures for the RMLO to file a SAR if it becomes aware that a customer is operating in violation of Bank Secrecy Act (BSA) compliance requirements.
- Review the RMLO’s due diligence beyond the minimum due diligence obligations dictated by the level of risk posed by the individual RMLO customer.

Risk Assessment

- Purpose of the account.
- Locations and markets served by the RMLO.
- Anticipated account activity (type and volume).
- Types of products and services offered by the RMLO.

Independent Testing

- Apply the RMLO’s policies, procedures, forms.
- Determine level of implementation of the Customer Information Protection (CIP) program.
- Confirm FinCEN registration, if required.
- Confirm compliance with state, federal and GSE requirements, if applicable.
- Confirm agent status, if applicable.
- Conduct a basic BSA/AML risk assessment to determine the level of risk associated with the account and whether further due diligence is necessary.
- Review the BSA/AML program.
- Review results of the RMLO’s independent testing of its AML Program.
- Review written procedures for AML Program.
- Conduct off-site and, where applicable, on-site visits.

- Review list of agents, including locations, within or outside the United States, which will be receiving services directly or indirectly through the RMLO account.
- Review written agent management and termination practices.
- Review written employee screening practices.

AGENCIES AND GINNIE APPLICATIONS

Our professionals have the unique expertise to provide comprehensive compilation of an application to become a Fannie Mae, Freddie Mac Seller/Servicer or Ginnie Mae Issuer. Our due diligence procedures include:

- Review eligibility requirements to submit an application to become a Fannie Mae, Freddie Mac Seller/Servicer or Ginnie Mae Issuer.
- Compile, review, and complete Fannie Mae, Freddie Mac, and Ginnie Mae application documentation in accordance with GSE's and Ginnie Mae guidelines.
- Implementation of specific due diligence tasks that need to be completed for submitting the application.
- Completion of checklists and questionnaires in each due diligence area required to complete the Fannie Mae, Freddie Mac and Ginnie Mae application.
- Review implementation of GSE's and Ginnie Mae's terms and conditions required to be implemented, in accordance with the application processing.
- Assist in identifying and forging relationships with certain parties, such as Servicers, Document Custodians, and compliance support entities for Fannie Mae, Freddie Mac Seller/Servicer or Ginnie Mae Issuer eligibility.
- Policies and Procedures – Secondary Marketing and Servicing, as required by the GSE's and Ginnie Mae.
- Quality Control Plan – Underwriting, Originating, Secondary Marketing, and Servicing, as required by the GSE's and Ginnie Mae.
- Training employees involved in Fannie Mae, Freddie Mac Seller/Servicer or Ginnie Mae Issuer loan originations.
- Monitor process implementation, including assistance with periodic reporting and updating requirements to maintain active status as a Fannie Mae, Freddie Mac Seller/Servicer or Ginnie Mae Issuer.

SERVICER QUALITY ASSURANCE

Our Quality Assurance Review is an independent audit and due diligence procedure that concentrates on various functional aspects of the servicer or subservicer. Furthermore, we can customize the review to conform to specific compliance needs.

Quality Assurance Reviews include, but may not be limited to:

STRUCTURAL REVIEW

Ascertains that the servicer or subservicer has legal authority to operate in the client's market, is a servicer or subservicer in good standing, and has adequate corporate structure and capacity to enter into a servicer or subservicer agreement.

FINANCIAL REVIEW

Determines the servicer's or subservicer's financial stability, financial controls, and capacity to enter into and continue a servicer or subservicer agreement.

OPERATIONAL REVIEW

Verifies the servicer's or subservicer's operational compliance with investors' requirements, loan performance metrics, and demonstrates the capability to provide quality service to both mortgagors and investors.

DEFAULT MANAGEMENT

Evaluates default procedures and loss mitigation strategies, including default valuations, REO asset management and disposition, REO title, foreclosure title, short sales, and default workflow.

TECHNOLOGY

Assesses origination workflow platform and integrity analyses of the loan origination system, technology licensing, appraisal reporting, collateral valuations, title insurance, insured and non-insured title reports, closing and escrow accounts, interim servicing, user interface, and normative report functions.

SERVICER COMPLIANCE

We provide guidance, audits, due diligence reviews, and examination preparation, for transactional matters involving residential mortgage servicing.

We also assist clients with proactive and remedial efforts to enhance servicing compliance policies, procedures, practices and internal controls, including risk assessments and preparation and review of policies and procedures.

COMPREHENSIVE REVIEWS

- Compliance with CFPB requirements
- Default management and foreclosure alternative
- Compliance with HAMP and other federal or state loan modification programs
- Compliance with state default requirements including foreclosure law
- Compliance with bankruptcy rules
- Compliance with state and federal fair debt collection requirements
- Compliance with state and federal privacy requirements
- Compliance with FHA loss mitigation and other default requirements
- Compliance with Fannie Mae, Freddie Mac and private label securities investor requirements

- Review of collection and default correspondence and scripts
- Default fees, services and default arrangements such as lender-placed insurance requirements, field services and valuations
- Advice regarding non-default servicing operations, including billing statements, payment application, customer service, servicing fees, escrows, payoffs and releases
- Advice and assistance in obtaining required state licenses to engage in mortgage servicing operations or to hold MSRs
- Purchase and sale of mortgage servicing and negotiation of subservicing and special servicing arrangements
- State licensing requirements, including impact of SAFE Act loan originator licensing on mortgage servicers

We provide guidance on the operational impacts servicers face integrating compliance with each new statutory provision, federal or state, into their servicing operations.

MORTGAGE DEFAULTS

We collaborate with a lender to bring down high defaults and claims experience with the goal of implementing procedures to avoid these problems in the future. Our “task force” approach provides a complete review and action analysis, from the point of initiation of procedures to secondary market transactions and follow-up with servicers or investors.

Our audit and due diligence includes loan analytics, reviews of policies and procedures, evaluation of operations and systems. Our engagement team provides subject matter experts in all applicable areas of regulatory compliance regarding mortgage defaults and loan performance.

LICENSING

We offer full service, whether single state, multiple states, or HUD-FHA approval. Our licensing group is trained to handle all licensing involved in initial licensure, renewals, mergers, acquisitions, address and principal ownership changes. For those lenders or brokers who find it difficult to maintain their licensing, we offer a licensing management program that keeps all loan officer and company licenses up to date. We coordinate the process of qualifying to do business in each state, obtaining name or assumed name approval, appointing Resident Agents, and obtaining the necessary Surety Bonds for licensing.

THIRD PARTY ORIGINATOR APPROVALS

Auditors review the TPO application and publicly available data in order to give lenders a richer, multi-faceted and detailed view of their TPOs. All data is made available in a report.

- Third Party Originator Application – Completeness Review
- Lender Specifications: customized to lender requirements
- Document Repository Online (24/7/365)
- Auditors Review: status of all supporting documents

- Analysis: Supporting documents (where required)
- Minimal Software Configuration
- Connectivity: both Extranet and Auditor Contact
- Approval Parameters: TPO's main office and branches
- License Tracking and NMLS Analysis
- Legal Review (where required)
- Civil Background Checks *
- Criminal Background Checks *
- Credit Monitoring: derogatory details *
- Business Report (where required) *
- Negative Items Report
- Record Retention: historical and legacy documents
- Auditor Contact: directly with Company or directly with TPOs
- Updates for Lender Personnel or TPO Personnel
- Preliminary and Missing Items Report
- Final Report
- Fraud Alerts
- Ongoing Compliance Surveillance
- MARI/MIDEX Inquiries *
- Written and Verbal Connectivity (i.e., emails, telephone calls)

Our analytics offer lenders the ability to understand, validate, and verify their TPO relationships in order to comply with federal and state regulatory compliance guidelines.

* Pass-Through Fee

VENDOR MANAGEMENT COMPLIANCE

Recent bulletins issued by the Consumer Financial Protection Bureau (CFPB) raise the bar on effective Third-Party Management. We provide a comprehensive due diligence to financial institutions in conformance with CFPB guidelines and the following six criteria:

1. Review arrangements, agreements, or contracts exist with vendors and third parties related to mortgage products or servicing.
2. Determine changes have been made or need to be made to the above arrangements, agreements, or contracts to ensure that service providers comply with new regulations and all legal obligations.
3. Audit complaints reviewed regarding vendor activity for compliance and process concerns.
4. Evaluate training procedures received and reviewed for third parties related to regulatory requirements.
5. Determine training provided by any third party service providers.
6. Assess contracts with any third parties related to mortgage activities.

TRAINING

We deliver our training through webinars, online, or live classroom engagements on regulations that impact mortgage compliance implementation. We offer a comprehensive suite of educational programs and services that give professionals nationwide the tools they need excel in the mortgage industry.

Designed, developed and delivered by industry experts who have extensive experience in the mortgage industry, our courses are tailored to fit all career levels and completed by thousands of mortgage professionals each year. We can also customize training to suite your needs!

Our programs help ensure mortgage professionals have the knowledge and capabilities necessary to understand and recognize current business trends and changing industry regulations.

DELIVERY

- PowerPoint, Webinar, Lecture Outlines, Attendance, and FAQs
- Conducted by Subject Matter Experts
- One Hour Modules
- Any Size Group
- On-Site or Off-Site

TOPICS INCLUDE

- Ability to Repay/Qualified Mortgage Rule – A Guide
- Advertising and Marketing (RESPA, TILA, FTC)
- Anti-Money Laundering Program
- Borrower's Right to Privacy in a Mortgage Transaction
- CFPB Exam Preparation
- Collecting Government Monitoring Information (HMDA)
- Consumer Complaints and Resolution
- Consumer Financial Protection Bureau: Structure and Scope
- Do Not Call Implementation Act
- Dodd-Frank Act: Structure and Scope
- Electronic Funds Transfer Act
- Equal Credit Opportunity Act
- Essentials of Mortgage Loan Origination- Federal and State Regulations
- Ethical Dilemmas and the Fight against Mortgage Fraud
- Ethics and Fair Lending — HOEPA and Predatory Lending
- Ethics and Fair Lending — Mortgage Fraud and Consumer Protection
- Ethics and Fair Lending (ECOA)
- Examination Preparation (Federally Regulated)
- Examination Preparation (State)
- Fair Credit Reporting Act (FCRA) & Fair and Accurate Credit Transactions Act (FACTA)
- Fair Debt Collection Practices Act – Overview
- Federal Foreclosure Laws and Regulations
- FHA Fundamentals
- Flood Disaster Protection Act
- Fundamentals of Originating and Processing Conventional Loans
- Fundamentals of Originating and Processing FHA Loan
- Home Mortgage Disclosure Act - Data Collection and Reporting (HMDA)
- Home Ownership and Equity Protection Act (HOEPA)

- Identity Theft Prevention Program and Red Flag Rule
- Interest Only and Negative Amortization Mortgages
- Introduction to Mortgage Loan Fundamentals
- Key Components of Credit Reports
- Loan Origination Systems – Overview
- Loan Originator Compensation (TILA) – A Guide
- Management Guidelines pursuant to the CFPB
- Managing Daily In-House Compliance
- Mortgage Acts and Practices
- Mortgage Loan Fundamentals — Basic Loan Products
- Mortgage Loan Fundamentals — Full Document Loans
- Mortgage Loan Fundamentals — Limited and No-Income Verification Loans
- Mortgage Loan Originating under the New CFPB 2014 Rules
- Mortgage Loan Servicing: New Regulations for Consumer Protection
- New Rules Training (CE): MLO Requirements of the CFPB - Year of Implementation (2014)
- Nontraditional Adjustable Rate Mortgages
- Nontraditional Fixed Rate Mortgages
- Policies and Procedures for Mortgage Brokers
- Policies and Procedures for Investors
- Policies and Procedures for Lenders (Mortgage Bankers)
- Policies and Procedures for Mini-Correspondents
- Policies and Procedures for Mortgage Servicers
- Policies and Procedures for Vendors
- Privacy and Gramm-Leach-Bliley
- Protecting Consumers through the Fair Credit Reporting Act
- Quality Control Requirements
- Real Estate Settlement Procedures Act (RESPA) and the Good Faith Estimate
- Reporting Requirements under the Home Mortgage Disclosure Act – for MLOs
- Reporting Requirements under the Home Mortgage Disclosure Act – for Staff
- RESPA/TILA Disclosure Integration
- Reverse Mortgages – A Guide
- Right of Rescission (TILA)
- Secure and Fair Enforcement for Mortgage Licensing Act (Safe Act)
- Servicing Standards and Guidelines
- Subprime Mortgages
- Telemarketing Sales Rule
- Third Party Providers and Vendor Management
- TILA/RESPA Integration Disclosure (TRID)
- Truth-in-Lending Act (TILA) and the TILA Disclosure
- Understanding the Property Appraisal Process
- Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)
- Vendor Management Compliance

THIRD PARTY ORIGINATOR APPROVAL - DUE DILIGENCE

In accordance with a lender's pre-set standards and requirements, our staff of trained auditors reviews the entire Correspondent Application Package's information and documentation to ensure accuracy and verification. Reviews include: closing agents, settlement agents, and third-party vendors.

Quick Processing

- Hands-On
- Civil and Criminal Background Checks
- Finding Report
- Database

- NMLS Licensing Linked to Quality Control
- Records Returned for Renewals
- Renewal Notifications
- Online Access to Secure Extranet

DISASTER RECOVERY PLAN

Comprehensive review of existing disaster recovery architecture: reviews that highlight an institution's regulatory strengths and weaknesses. Documented solution that assures compliance with the regulations, rules, and laws governing the safeguarding of regulations, rules, and laws governing the safeguarding of personal information contained in both paper and electronic records.

QUALITY CONTROL AUDITS

LCG meets the needs of loan quality control review through a comprehensive approach. LCG's scope is consistent with agency servicer/seller standards. Detailed reports are provided with reviews addressing federal and state compliance requirements.

Our staff of conventional and FHA-DE & VA-LAPP underwriters and reviewers specialize in fast turnaround on recurring QC or special projects.

QC Service Options

Pre-Funding File Review
 Pre-Funding Investigative Services
 Delinquent Loans & EPDs
 Fraud Detection
 Post Funding QC
 Discretionary Compliance

Post-Funding reports provide clients with state-of-the-art graphs, executive summaries, and a full range of trend reports.

QUALITY CONTROL PLANS

Our quality control plan is the most comprehensive available in the mortgage industry. Continually updated, it consists of all required audit requirements mandated by FHA, VA, the GSEs, and most investors.

- QUALITY ASSURANCE GUIDELINES
- AUDIT REQUIREMENTS: FHA | VA | GSEs | USDA
- SYSTEM INTEGRITY AND DATA SECURITY
- SELECTION PROCEDURES
- PRE-FUNDING REQUIREMENTS
- AUDITING PROCEDURES: INTERNAL & EXTERNAL

- REPORTS AND FINDINGS
- NOTIFICATIONS TO HUD, BUSINESS UNITS, GSEs
- MAINTENANCE AND OBLIGATIONS
- NUMEROUS REGULATORY ADDENDA
- ADDENDUM: FANNIE MAE LOAN QUALITY INITIATIVE
- THIRD PARTY AUDITOR COMPLIANCE
- MONITORING OF IMPLEMENTATION

LOAN ORIGATION SYSTEMS AND PLATFORM DEVELOPMENT

Guidance in building retail, wholesale and correspondent platforms, including all regulatory support to established new departments and divisions within the existing company structure. Through our guidance, both management and compliance personnel can be assured that they comply with the regulations, rules, and laws governing the origination of mortgage loan products.

LOAN LEVEL ANALYTICS AND AUDITS

The following reviews are performed at the loan level:

- New Loan Quality Assurance: Screen all new loans to include independent verification of borrower, collateral, compliance, fraud and related origination data, and risk score each loan with regard to future performance.
- Quality Analysis: Loan-level exception reporting with accumulation by exception type, lender, broker, correspondent, loan type, geographies and trend analysis.
- Loss Mitigation Data Analytics/Triage: Automated collection of current borrower and collateral data, (i.e., income, employment, credit, collateral, fraud, etc.), via web-services and scoring each loan with regard to recovery potential.
- Risk-Scored Modification Calculation: Calculation of a monthly payment amount that will result in a high likelihood of success, based on new data. Adjustment of term, interest rate and principal, to generate the new monthly payment within specified limits.
- Government Program Eligibility: Automated comparison of modified loan terms to available government modification and refinance programs; eligibility determination and calculation of qualifying payment and new loan terms.
- Loan by Loan Reactive or Bulk Loan Proactive Process: Individual loans may be submitted by the borrower through the website/IVR, or the Service Agent can submit with real-time response, or processing of pools of loans with proactive outreach to borrowers.
- Calculation of Other Available Resolution Alternatives: Calculation of short sale value, forbearance agreement, note sale to investor, and net foreclosure recovery value.

PREFUNDING REVIEWS

Our suite of prefunding risk evaluation complies with all Fannie Mae requirements. Fannie Mae requires that a lender's Quality Control (QC) plan must include a prefunding mortgage audit process.

These audits are expected to provide information that should prevent closing mortgage loans with significant defects such as misrepresentation, inaccurate data, or inadequate documentation.

- Same Day Response coordinated with lenders process flow
- Findings Report, per loan file, with full set of analyses
- Secure Digital Upload/Download or Direct Link to LOS

Verification, Validation, and Audit Investigation

Automated Underwriting System (AUS) Review

Borrower Identity Verification

Verification of Employment

Validation of Social Security or Tax Identification Numbers

DU "Potential Red Flag" Messages

Validation of Qualified Parties to the Transaction

Qualifying Ratios

Borrower Credit - Undisclosed Liabilities

Appraisal Validation

Property Unit Number Validation

Calculation of the LTV Ratio

Manual Underwriting of DU Refer with Caution/IV

LOAN ORIGINATOR COMPENSATION – AUDIT AND EXAMINATION

Independent review of loan originator compensation using the State Non-depository Examiner Guidelines for Regulation Z - Loan Originator Compensation Rule instituted by the Multi-State Mortgage Committee (MMC), a ten-state representative body created by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). These are the examiner guidelines that are used as a tool for consistent implementation of the Federal Reserve Board's final rules for closed-end credit under Regulation Z.

SCOPE

1. Full Scope: Pre-exam completion of Modules 2 and 3 followed by completion of Module 1 through documentation review, onsite transaction testing, and interviews of institution staff or other parties.
2. Limited Scope: Completion of Module 1, excluding transaction testing and interviews, based on the institution's responses to Modules 2 and 3.
3. Limited Scope with offsite testing: Combine the Limited Scope approach with an offsite sampling of transaction documents and/or telephone interviews of institution staff or other

parties.

Module 1 consists of questions intended to guide the examiner for specific review.

Much of the checklist can be completed from a thorough, off-site review of the institution's responses to Modules 2 and 3.

Other sections require transaction-level interviews of institution staff and others.

BUSINESS DEVELOPMENT

Our professionals have the unique expertise to developing business plans and financial models for mortgage loan originators. We provide all required documentation and regulatory compliance guidance to establish retail, wholesale and correspondent origination platforms.

Procedures and Documentation: Retail, Wholesale, Correspondent Platforms

- Procedures and Documentation: New Departments and Divisions
- Regulatory compliance guidance to effectively scale up or down
- Business Plans designed to respond to market and regulatory requirements
- Financial Models to attract new capital, warehouse lenders, and investors
- Competitive intelligence gathering and analysis
- Internal efficacy evaluation to determine structural growth support
- Business process analysis to reveal gaps, risk, and liabilities
- Business process development to properly integrate new processes
- Feasibility Studies to predict effects of growth or change in market conditions
- Forecasting Models to exploit industry trends
- Sales and Marketing to clarify company brand and attract new customers
- Corporate strategy updates and on-going review of progress and new goals

INFORMATION SECURITY PLAN AND RISK ASSESSMENT

Pursuant to federal guidelines, all aspects of maintaining a secure environment at the Company as it relates to the protection of Personal Information. The purpose is to establish administrative, technical and physical safeguards for Personal Information that are appropriate to: (a) the size, scope and type of business of the Company; (b) the resources available to the Company; (c) the amount of Personal Information stored by the Company; and (d) the need to ensure that the Company's Personal Information is secure and maintained in confidence. A primary goal of this Policy is to cause everyone with access to Personal Information to continually assess the security and confidentiality of information at the Company and apply reasonable safeguards to protect that information from unauthorized access.

FORENSIC MORTGAGE AUDIT®

Creating awareness and preventing mortgage fraud one transaction at a time. Our industry is in need of new processes in training; lack of new processes in training leads to old mistakes. In this unprecedented

age of mortgage fraud, Lenders Compliance Group provides support services to create awareness, prevention, and detection.

POLICIES AND PROCEDURES

Our Policy and Procedures are comprehensive in scope and conform to all federal, state, Agency, and HUD/VA/UDFS requirements. We also offer unique manuals that provide self-assessments to be used as part of an on-going compliance program. All policy documents are customized to the client's business model.

IDENTITY THEFT PREVENTION PROGRAM

RED FLAGS RULE AND ADDRESS DISCREPANCIES

Our Identity Theft Prevention Program is the most comprehensive policy and procedure manual available. It is a 36-page, fully enumerated, indexed, and tabulated document! PLUS, the Program includes dynamic forms that permit us to customize your Identity Theft Prevention Program. Off-site, due diligence review is included.

TABULATED SECTIONS

- POLICIES AND PROCEDURES: 36-pages, enumerated and indexed
- APPENDICES: 2 appendices for Red Flags and Alien Identification
- FORMS: 16 forms used to implement the Program
- FLOW CHARTS: for individuals and businesses
- INCIDENTS REPORT
- OVERRIDES
- UPDATES
- REVISION HISTORY
- APPROVALS

REGULATORY COMPLIANCE - RESEARCH

- State and Federal Banking Statutes
- State and Federal Banking Agency Materials and Decisions
- Office of Financial Institution Adjudication Decisions
- Relevant Banking Case Law Dockets
- Mortgage Banking News and Issues
- Latest Updates for Mortgage Banking
- Banking Forms
- HUD Mortgagee Letters
- GSE Lender and Service Letters
- Federal Finance & Banking – News Releases
- Issuances of all Federal Regulatory Agencies